

Falls Church, Virginia 22041

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File: D2009-193

Date:

In re: JOSE EXPEDITO MANTAL GARCIA, ATTORNEY

MAY 31 2013

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

MOTION

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

The respondent's opposed request for reinstatement to practice will be granted.

We issued a final order of discipline on October 27, 2009, indefinitely suspending the respondent from practice before the Board, the Immigration Courts, and the Department of Homeland Security (the "DHS"). This was based on the fact that the respondent, on November 29, 2007, pled guilty to conspiracy to commit immigration fraud, in violation of 18 U.S.C. § 371 and 1546(a), in the United States District Court for the Eastern District of Virginia. The court issued its judgment on February 8, 2008, and the respondent was placed on supervised probation for 2 years.<sup>1</sup>

The respondent seeks to be reinstated to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107(b) (2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012), *see also* 78 Fed. Reg. 24669 (April 26, 2013).

An attorney seeking reinstatement "shall have the burden of demonstrating by clear and convincing evidence that he... possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or DHS, or before all three authorities and that his... reinstatement will not be detrimental to the administration of justice." 8 C.F.R. § 1003.107(b)(1) (2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012), *see also* 78 Fed. Reg. 24669 (April 26, 2013); *Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007). The respondent has submitted substantial evidence and arguments concerning this requirement.

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<sup>1</sup>Additionally, on July 31, 2008, the Supreme Court of New York, Appellate Division, Third Judicial Department, suspended the respondent from the practice of law for 1 year, effective June 12, 2008. On August 28, 2009, he was disbarred from the practice of law in Maryland. The respondent presents evidence that he has been reinstated to practice in both jurisdictions. The DHS acknowledges that the respondent meets the definition of attorney as set forth at 8 C.F.R. § 1001.1(f).

For example, Exhibit C to the reinstatement motion is the "Statement of Facts" that was incorporated into the respondent's plea agreement. The parties stipulated that the respondent in April 2001, signed the name of an employer to a certificate of employment, incorrectly stating that a client had the requisite job experience for an immigrant visa. The respondent believed this to be true but did not take proper steps to investigate. *See also* "Presentence Investigation Report", prepared for the federal district court judge by a United States probation officer, Respondent's Mot., Exh D. The report states that the respondent was a "minor participant" in the fraud, and "was not aware of the full scope of the conspiracy." *Id.*; *see also* Board's Oct. 27, 2009, dec. at 2.

After entering his guilty plea on November 29, 2007, the respondent ceased practicing law, until in June, 2012, he practiced part-time before the EEOC (Respondent's Mot. at 5-6, Exhs. G-H). The respondent expresses remorse and apologies for his unlawful conduct, and has expressed such regret and remorse during criminal and other disciplinary proceedings (Respondent's Mot. at 6, 18, 21-22, Exh. U).

The sentencing judge in the respondent's criminal case, T.S. Ellis, III, believed that the respondent's misconduct did not warrant permanent expulsion (Respondent's Mot., Exh. K). The federal district court judge said that he was giving the respondent "lenient" punishment, and that he hoped the respondent would receive only a suspension from the practice of law. *See also* Board's Oct. 27, 2009, dec. at 2.

The sentencing judge's comments were referenced by the New York court in deeming the respondent fit to practice law after being suspended for two years (Respondent's Mot. at 9). Additionally, the respondent was readmitted in Maryland after three and a half years of being disbarred (Respondent's Mot. at 10).

The respondent's probation officer on July 31, 2012, submitted a letter to the Maryland Bar Counsel urging that the respondent be readmitted to practice (Respondent's Mot. at 11, Exh. L).

The respondent also presents an "Amended Sentencing Position of the United States", Respondent's Mot. at 12, Exh. M, in which the Assistant United States Attorney stated that the respondent's "offense level should be reduced both for acceptance of responsibility and based on his role in the offense", and noted again that the respondent's law partner was "a larger player in the broader fraud." *See also* Board's Oct. 27, 2009, dec. at 2. Letters of recommendation from immigration practitioners are submitted (Respondent's Mot., Exhs. N-O).

The respondent presents evidence that he has undergone "rigorous screenings before New York's Committee on Professional Standards and the Committee on Character and Fitness", Respondent's Mot. at 13, Exh. P, and both determined that the respondent deserved to be reinstated (which he was). The respondent's unlawful conduct was viewed as an isolated incident.

The respondent contends that he has not practiced immigration law since November, 2007, and that an effective suspension of five years is a "meaningful sanction for deterrent purposes" (Respondent's Mot. at 17).

The respondent presents evidence of reformation and efforts to make up for his mistakes (Respondent's Mot. at 19-20, Exh. V). He asserts that he has kept abreast of developments in immigration law (Respondent's Mot. at 20-21).

Given the respondent's submissions and considering the totality of circumstances presented, the Board finds, despite the government's opposition, that the respondent should be reinstated to practice.

ORDER: The respondent is reinstated to practice before the Board, the Immigration Courts, and the DHS, as of the date of this order.

FURTHER ORDER: Because the respondent has been reinstated, public notices regarding the respondent's suspension should reflect this reinstatement.

FURTHER ORDER: If the respondent wishes to represent a party before the DHS or Board, he must file a Notice of Appearance (Form G-28 or Form EOIR-27), including any case in which he was formerly counsel, prior to his suspension.



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FOR THE BOARD